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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

BRENDA YAJAIRA GARCIA,

Defendant and Appellant.

D074279

(Super. Ct. No. SCS294814)

APPEAL from an order of the Superior Court of San Diego County, Desiree A. Bruce-Lyle, Judge. Affirmed.

Alex Coolman, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Michael Pulos and Joy Utomi Deputy Attorneys General, for Plaintiff and Respondent.

Brenda Yajaira Garcia entered a guilty plea to one count of possession of a controlled substance for sale (Health and Saf. Code, § 11351) as part of a plea agreement.

The parties stipulated to a split sentence of four years, with two years to be served under mandatory supervision. One of the conditions of mandatory supervision imposed at the original sentencing was that Garcia not knowingly use or possess alcohol while under supervision. At the prerelease hearing, Garcia objected to the prohibition on the use or possession of alcohol. The trial court overruled the objection and continued the condition in force.

Garcia appeals contending the condition is unrelated to the offense or to the need to supervise the offender under the reasoning of *People v. Lent* (1975) 15 Cal.3d 481 (*Lent*). The People contend the challenge should be deemed forfeited since Garcia did not object at the original sentencing and that the court properly found the condition necessary to the supervision of Garcia considering the facts of this case.

We will exercise our discretion to resolve the case on the merits and not apply forfeiture. Given Garcia's use of marijuana and alcohol in the period leading up to the effort to import over four kilograms of heroin into the country, we believe the trial court properly ordered Garcia to refrain from the use or possession of alcohol.¹

DISCUSSION

A. Background

This case involves Garcia's first criminal offense. As she explained she had become involved with other people who apparently persuaded her to carry four kilograms

¹ We decline to address the claim of forfeiture. The objection was raised prior to the implementation of the conditions of supervision. The matter was fully discussed by the trial court. We have an adequate record with which to analyze the issues.

of heroin in a pouch that gave her the appearance of being pregnant. She was apprehended at the U.S. border. Garcia did not directly discuss her participation in the offense in her interviews with the probation officer but did indicate she had become involved with the wrong people. Garcia had used alcohol and marijuana for a number of years before the current offense. She indicated she had used more alcohol and marijuana in the time leading up to the offense because of personal problems.

Garcia did not object to the alcohol condition at the original sentencing. She did object at the prerelease hearing prior to being placed on mandatory supervision. The court overruled her objection finding Garcia was minimizing her substance issues. The court reasoned Garcia had increased her alcohol and marijuana use at the time of the offense as a mechanism to deal with the pressures of her "personal problems." The court reasoned the pressures of complying with mandatory supervision could well lead to further use of substances and she needed the alcohol restriction as part of her rehabilitation.

B. Legal Principles

Trial courts have broad discretion in setting conditions of mandatory supervision. Although a release on mandatory supervision has the features of parole supervision, conditions of such release are analyzed under the same standard as probation supervision. (*People v. Douglas* (2015) 240 Cal.App.4th 855, 864; *People v. Martinez* (2014) 226 Cal.App.4th 759, 764 (*Martinez*).)

The purpose of mandatory supervision is to minimize public risk and encourage rehabilitation " 'through the enforcement of court-ordered conditions of probation.' "

(*People v. Carbajal* (1995) 10 Cal.4th 1114, 1120.) Trial courts may impose such conditions of release as are reasonably necessary to insure the defendant's reformation and rehabilitation. (*People v. Olguin* (2008) 45 Cal.4th 375, 379.) Probation conditions which are not directly connected to the underlying offense, or which restrain otherwise lawful activity may be imposed where necessary and appropriately limited to deal with the legitimate needs of probation supervision. (*Lent, supra*, 15 Cal.3d 481 at p. 486.) Such conditions of supervision may not be held to be invalid unless all of the following factors are found true. The condition will not be invalid unless it: " '(1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality.' " (*Olguin*, at p. 379.)

Courts have broad discretion to fashion appropriate conditions of release in order to promote the goals of such supervision. (*Martinez, supra*, 226 Cal.App.4th at p. 764.)

C. Analysis

The trial court clearly believed alcohol and marijuana were factors which, in part, led to the poor choice of involvement in smuggling a substantial amount of heroin. Garcia had no criminal history and was at a loss to explain how she had become involved in this offense. One can glean from the facts that she got involved with the wrong group of people. Whatever stresses and personal problem that created, a reasonable judge could conclude Garcia's increased use of substances to address her personal problems played a part in her poor choices. The court could reasonably believe Garcia will face stress in the mandatory supervision process and, if such stresses again lead to increased use of

alcohol, she could again find herself making poor choices in her behavior. Although possession and consumption of alcohol is not per se illegal, it could impair her judgment as well as her chances to succeed in her period of supervision. There was no abuse of discretion in overruling Garcia's objection to the alcohol condition.

DISPOSITION

The judgment is affirmed.

HUFFMAN, J.

WE CONCUR:

McCONNELL, P. J.

IRION, J.